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THE STATE OF SOUTH CAROLINA
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

GASTON COPPER RECYCLING CORPORATION
SCD 001 368 073
LEXINGTON COUNTY

CONSENT AGREEMENT
04 - 03 - HW

This Consent Agreement (Agreement) is being entered into between the South Carolina Department of Health and Environmental Control (the Department) and the Gaston Copper Recycling Corporation (GCRC) in Lexington County, South Carolina with regard to Corrective Action (CA) and Land Use Controls (LUCs) at GCRC. The Agreement was developed to assure the effectiveness and reliability of the required CAs and LUCs for as long as any CA or LUC is required.

LUCs, with regard to GCRC real property referenced herein, mean any restriction or control that limits the use of and/or exposure to any portion of that property, including water resources, arising from the need to protect human health or the environment. The term encompasses "institutional controls" such as those involved in real estate interests, governmental permitting, zoning, public advisories, deed notices, and other legal restrictions. The term also includes restrictions on access, whether achieved by means of engineered barriers (e.g., fence or concrete pad) or by human means (e.g., the presence of security guards). Additionally, the term includes both affirmative measures to achieve the desired restrictions (e.g., night lighting of an area) and prohibitive directives (e.g., no drilling of drinking water wells for the duration of the CA). Considered altogether, the LUCs will provide a tool for how the property should be used in order to maintain the level of protectiveness that one or more CAs were designed to achieve.

The following shall constitute a change in land use:

1. Any change in land that would be inconsistent with those specific exposure assumptions in the human health and/or ecological risk assessments or other criteria that served as the basis for selecting the LUCs as part of the final CA;
2. Any activity that may disrupt the effectiveness of the CA or LUC including, but not limited to: excavation at a Solid Waste Management Unit (SWMU) and/or Area Of Concern (AOC); groundwater pumping that may impact a groundwater mixing zone or groundwater corrective action or monitoring program; a construction project that may impact ecological habitat protected by the corrective action; removal of access control; removal of warning signs; or rezoning; and,
3. Any activity that may alter or negate the need for the specific CA or LUCs.

FINDINGS OF FACT

1. GCRC owned and operated a hazardous waste management facility located off Highway 321, approximately one and one-half miles south of the City of Gaston, South Carolina. Prior to GCRC's ownership, the property was owned and operated by the Nassau Recycle Corporation (NRC) or AT&T Nassau Metals Corporation (AT&T Nassau).
2. On November 17, 1980, NRC submitted to the United States Environmental Protection Agency (USEPA) its Part A Hazardous Waste Permit application and later achieved Interim Status. On May 2, 1984, a revised Part A application was submitted to show a change in ownership from NRC to AT&T Nassau. On June 14, 1990, GCRC submitted a revised Part A application to reflect the transfer of ownership of the facility from AT&T Nassau to GCRC.

3. On September 19, 1995, USEPA and GCRC entered into Administrative Order on Consent 94-09-R which addressed investigation and remediation of a release(s) of hazardous waste or hazardous constituents into the environment from the GCRC facility.

CONCLUSIONS OF LAW

The South Carolina Hazardous Waste Management Act, S.C. Code Ann §44-56-40 (1976) (the Act), authorizes the Department to enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as it deems appropriate, with other state, federal or interstate agencies, municipalities, educational institutions, local health departments, or other organizations or individuals, to carry out the provisions and purposes of the Act.

NOW, THEREFORE, IT IS AGREED, and pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §44-56-40 (1976) that:

1. GCRC will implement and maintain the CAs and LUCs for specific SWMUs and/or AOCs identified in the Final Decision/Response to Comments and the latest approved Corrective Measure Implementation (CMI) Work Plan as part of the corrective action.
2. GCRC shall conduct inspections/reviews of all SWMUs and/or AOCs as detailed in the latest Department approved CMI Work Plan (or other Corrective Action document approved by the Department). These inspections shall be for the purposes of verifying that all necessary CAs and LUCs have been implemented and are being properly maintained. GCRC will be responsible for:
 - a. Ensuring that all required inspections are performed;
 - b. Ensuring that the Department is provided with thirty (30) days advance notice of, and opportunity to observe facility personnel as they conduct at least one of the inspections each year;

- c. Ensuring that the Department is notified in writing within thirty (30) days of any deficiencies noted; and,
 - d. Ensuring that all appropriate measures are undertaken within thirty (30) days to correct any deficiencies and timely notification in writing to the Department detailing measures taken.
- 3. GCRC shall prepare and forward an annual report to the Department signed by GCRC certifying the continued maintenance of all CA and LUCs associated with those SWMUs and/or AOCs identified in the latest approved CMI Work Plan.
- 4. GCRC will provide written notification to the Department at least sixty (60) days (except in emergency situations - where notice should be given as soon as practicable) prior to implementation of any change in land use, as defined herein, at the SWMUs and/or AOCs identified in the latest approved CMI Work Plan. A request for land use change will be provided for the purpose of obtaining the Department's concurrence with GCRCs determination as to whether the contemplated change will or will not necessitate re-evaluation of the selected CA or implementation of specific measures to ensure continued protection of human health and the environment.
- 5. No land use change should be implemented until the appropriate CA documents describing the proposed land use change are submitted to and approved by the Department. Any approved land use change shall be incorporated into this Agreement. The request for land use change will include the following, at a minimum:
 - a. An evaluation of whether the anticipated land use change will pose unacceptable risks to human health and the environment or negatively impact the effectiveness of the selected CA;

- b. An evaluation of the need for any additional CA or LUCs resulting from implementation of the anticipated land use change; and,
 - c. A proposal for any necessary changes in the selected CA to include associated LUCs.
6. GCRC shall provide financial assurance to continue maintenance of CA and LUCs selected during final CA or post closure care and, where necessary, reimplementation of LUCs and/or completion of CA necessitated by any inappropriate change to a LUC in accordance with R.61.79.264.101(b) and (c). The proof of financial assurance should fulfill the requirements of one of the options specified in R.61-79.264.145. Effective financial assurance fulfilling the requirements of this paragraph shall be submitted within sixty (60) days of the effective date of this Agreement. Changes to financial assurance shall be made in accordance with all applicable state regulations including R.61-79.264.145. The CA cost estimate shall be maintained and amended in accordance with all applicable state regulations including R.61-79.264.144.
7. Should the decision be made to transfer to any other agency, private person, or entity, either title to, or some lesser form of property interest in (e.g., an easement, or right of way, etc.) SWMUs and/or AOCs identified in the latest approved CMI Work Plan, then GCRC will ensure that, at a minimum:
- a. The Department is provided with written notification at least ninety (90) days prior to the initiation of the property conveyance process. Such notice shall indicate the following:
 - i. The type of property conveyance (e.g., an easement, or right of way, etc.);
 - ii. The anticipated final date for the conveyance;
 - iii. The names of the future property owners or holder of a future property interest;

- iv. A list of SWMUs and/or AOCs affected by the conveyance; and,
 - v. Mechanism(s) that will be used to maintain any CAs or LUCs which may need to remain in place after the property conveyance.
- b. All LUCs for SWMUs and/or AOCs identified in the latest approved CMI Work Plan or any approved change in land use shall be incorporated into the property conveyance documents so that the transferee(s) is given adequate notice of existing site condition(s). The details of the LUC provided in the property conveyance documents must be consistent with the details in the document where the final CA was selected.
- c. It is understood that for the planned conveyance of any SWMUs and/or AOCs identified in the latest approved CMI Work Plan, the Department will re-evaluate the continued appropriateness of any previously agreed upon LUC(s) based upon the level of assurance provided, to ensure that necessary LUCs will be maintained and enforced.
8. For every SWMU and/or AOC identified in the Final Decision/Response to Comments, GCRC will provide the information listed below prior to implementing any LUC. This information should be presented in the CMI Work Plan (or other CA document approved by the Department):
- a. SWMU and/or AOC Description - (e.g., provide survey plat map certified by a professional land surveyor);
 - b. Location/Area Under Restriction - (e.g., northeast corner of the facility between buildings 250 and 260 as reflected on BMP page # / GIS index under the corresponding IR Site number);

- c. LUC(s) Implemented and Corresponding Objective(s) - (e.g., installation of a fence to restrict public access, etc.);
 - d. CA Selection Document - (e.g., CMS with date);
 - e. Field Implementation Methods with Appropriate Figures - (e.g., engineering design drawings, etc.);
 - f. Inspection Methods and Maintenance Procedures - (e.g., Monitoring well plan to include analytical suite, well identification, reporting format, etc.);
 - g. Facility Planning Process - (e.g., a tracking system for facility employees to ensure proper maintenance of LUCs);
 - h. Schedule for Submitting a Contingency Plan to be Implemented in the Case that CA and LUCs are no Longer Effective - (e.g. procedure for notification and implementation of CA in the event that the pump and treat system is not achieving modeled goals, etc.);
 - i. CA Completion – LUC Termination Process - (e.g. The pump and treat system has achieved goals and prohibition of drilling of drinking water wells is no longer needed, etc.); and,
 - j. Other Pertinent Information
9. GCRC shall implement and maintain the CA described in the Final Decision/Response to Comments and the latest approved CMI Work Plan according to the procedures and specifications therein.
10. If any event occurs which causes or may cause a delay in meeting any of the above-scheduled dates for completion of any specified activity pursuant to its approval, GCRC shall notify the Department in writing at least five (5) business days before the scheduled date, or within seventy two (72) hours after the occurrence or onset of a *force majeure* of which GCRC

could not have reasonably foreseen or anticipated, describing in detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which GCRC proposes that those measures will be implemented. The Department shall provide written notice to GCRC as soon as practicable that a specific extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure* which shall mean any event arising from causes beyond the control of GCRC that causes a delay in or prevents the performance of any of the conditions under this Consent Agreement including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority or adjacent property owners; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by GCRC. Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure by GCRC to exercise due diligence in obtaining governmental permits or performing any other requirement of this Consent Agreement or any procedure necessary to the performance pursuant to the provisions on this Consent Agreement. Any extension shall be granted at the sole discretion of the Department, but shall not be unreasonably withheld, and shall be incorporated by reference as

an enforceable part of this Consent Agreement and, thereafter, be referred to as an attachment to the Consent Agreement.

IT IS FURTHER ORDERED AND AGREED that failure to meet any deadline, provision, work plan, report, or extension established within or pursuant to this Consent Agreement may be deemed a violation of the South Carolina Hazardous Waste Management Act, as amended. Upon ascertaining any such violation, appropriate action may be initiated by the Department in the appropriate forum to obtain compliance with the provisions of this Consent Agreement and the aforesaid Act.

THE SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

Date: 3/24/04
Columbia, South Carolina

By: Robert W. King, Jr.
Robert W. King, Jr., P.E., Deputy Commissioner
Environmental Quality Control

WE CONSENT:

GASTON COPPER RECYCLING CORPORATION

John C. Stephens Secretary

DATE: 3/17/04
DATE: _____

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Hartsill W. Truesdale
Hartsill W. Truesdale, P.E., Chief
Bureau of Land and Waste Management

DATE: 03/19/04

J. O. [Signature]
Approved by: Legal Office

DATE: 03/23/04